

Lafayette Parish
Filed Dec 29, 2021 10:59 AM
Simone Vaughan
Deputy Clerk of Court
C-20216667
1



ATTORNEYS AT LAW

December 29, 2021

Honorable Louis J. Perret
Lafayette Parish Clerk of Court
800 South Buchanan St.
Lafayette, LA. 70501-6853

Re Lafayette City-Parish Consolidated Government v Morbark, LLC, et al
15th JDC, Lafayette Parish

Dear Mr. Perret:

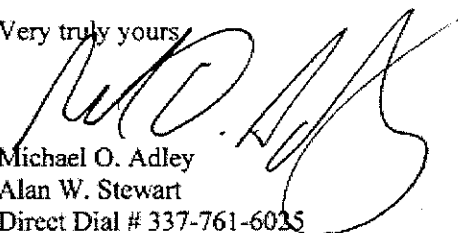
Enclosed herewith for filing on behalf of Lafayette City-Parish Consolidated Government are the following:

1. Louisiana Civil Case Reporting Sheet;
2. Petition for Redhibition and Damages;
3. Request for Notice of Trial Date, Etc.

Please file into the court record, forward to the appropriate judge for consideration, serve as requested, notify me of the dates and types of service and return a file stamped conformed copy to the undersigned for completion of my file.

Plaintiff herein is a governmental entity, therefore no court costs are required at this time.

Very truly yours,


Michael O. Adley
Alan W. Stewart
Direct Dial # 337-761-6035
Fax # 337-761-6061
Email: michaeladley@gibsonlawpartners.com
Email: alanstewart@gibsonlawpartners.com

CONFORMED COPY MAILED
December 30, 2021 KL

Enclosures

2448 Johnston Street - P.O. Box 52124 (70505) Lafayette, LA 70503
Telephone: 337-761-6023 Facsimile: 337-761-6061

STAMPED COPY GIVEN

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LOUISIANA CIVIL CASE REPORTING
Civil Case Cover Sheet - LA. R.S. 13:4688 and
Part G, §13, Louisiana Supreme Court General Administrative Rules

This civil case cover sheet shall be completed by counsel for the petitioner, counsel's authorized representative, or by the self-represented litigant (if not represented by counsel) and submitted with the original petition filed with the court. The information should be the best available at the time of filing. This information does not constitute a discovery request, response or supplementation, and is not admissible at trial.

Suit Caption:

Lafayette City-Parish Consolidated
Government

vs. Morbark, LLC, W.L. Doggett, LLC
d/b/a Doggett Machinery Services
and Caterpillar, Inc.

Court: 15th JDC

Docket Number: C-20216667

Parish of Filing: Lafayette

Filing Date: 12/29/2021

Name of Lead Petitioner's Attorney: Michael O. Adley

Name of Self-Represented Litigant:

Number of named petitioners: 1

Number of named defendants: 3

Type of Lawsuit: Please check the categories which most appropriately apply to this suit (no more than 3 categories should be checked):

- ☐ Auto: Personal Injury
- ☐ Auto: Wrongful Death
- ☐ Asbestos: Property Damage
- ☐ Product Liability
- ☐ Intentional Bodily Injury
- ☐ Intentional Wrongful Death
- ☐ Business Tort
- ☐ Defamation
- ☐ Environmental Tort
- ☐ Intellectual Property
- ☐ Legal Malpractice
- ☐ Other Professional Malpractice
- ☐ Maritime
- ☐ Wrongful Death
- ☐ General Negligence

- ☐ Auto: Property Damage
- ☐ Auto: Uninsured Motorist
- ☐ Asbestos: Personal Injury/Death
- ☐ Premise Liability
- ☐ Intentional Property Damage
- ☐ Unfair Business Practice
- ☐ Fraud
- ☐ Professional Negligence
- ☐ Medical Malpractice
- ☐ Toxic Tort
- ☐ Other Tort (describe below)
- ☒ Redhibition
- ☐ Class action (nature of case)

Please briefly describe the nature of the litigation in one sentence of additional detail:

Redhibition claim for Morbark Wood Turner

Following the completion of this form by counsel, counsel's representative, or by the self-represented litigant, this document will be submitted to the Office of the Judicial Administrator, Supreme Court of Louisiana, by the Clerk of Court.

Name, address and contact information of person completing form:

Name: Michael O. Adley **Signature:**

Address: 2448 Johnston St., Lafayette, LA 70503

Phone number: 337-761-6023 **E-mail address:** michaeladley@gibsonlawpartners.com

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LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

V.

MORBARK, LLC, W. L. DOGGETT, LLC
d/b/a DOGGETT MACHINERY SERVICES
and CATERPILLAR, INC.

DOCKET NO. _____

15TH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

PETITION FOR REDHIBITION AND DAMAGES

NOW INTO COURT, through undersigned counsel, comes Plaintiff, LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT (hereinafter "LCG"), who avers as follows:

Defendants

1.

Made Defendants herein are:

- a. **Morbark, LLC ("Morbark")**, a foreign limited liability company with its principal business establishment in Louisiana located at 501 Louisiana Avenue Baton Rouge, Louisiana 70802.
- b. **W.L. Dogget, LLC d/b/a Doggett Machinery Services, LLC ("Dogget")**, a foreign limited liability company with its principal business establishment in Louisiana located at 1011 Daradele Avenue, Baton Rouge, LA 70816.
- c. **Caterpillar, Inc. ("CAT")**, a foreign business corporation with its principal business establishment in Louisiana located at 501 Louisiana Avenue Baton Rouge, Louisiana 70802.

Factual Background

2.

On or about July 6, 2020, LCG purchased a Morbark 1100 Tub Grinder (hereinafter "Tub Grinder") from Doggett for \$680,000.00. The Tub Grinder was manufactured by Morbark. Its engine was manufactured and supplied by CAT.

3.

Doggett delivered the Tub Grinder to Lafayette, Louisiana, on or about July 6, 2020.

4.

LCG intended to use the Tub Grinder to compost yard waste dropped off by Lafayette Parish residents. LCG receives revenue for each cubic yard of yard waste received.

5.

Since July 6, 2020, LCG has experienced (and continues to experience) numerous problems with the Tub Grinder, including but not limited to malfunctions with the Tub Grinder's engine belt, belt wheel assembly, motors, torque limiter sensors, hydraulic hoses, grinding tips, nuts, bolts, welds, seals, rubber gaskets, alternator, fan assembly, deflector shield, AC compressor, AC dryer, main monitor, and engine.

6.

LCG provided notice to Defendants of these problems. Defendants attempted repairs to the Tub Grinder on numerous occasions to no avail, most recently on October 7, 2021.

7.

LCG incurred costs and expenses attempting to fix/repair these problems with the Tub Grinder.

8.

Because these problems have rendered the Tub Grinder inoperable, LCG had to rent a replacement Tub Grinder on multiple occasions at LCG's own cost.

9.

LCG lost revenue whenever the Tub Grinder was inoperable.

Warranty Against Redhibitory Defects

10.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-9 above.

11.

Pursuant to Louisiana Civil Code article 2520, Defendants breached the warranty against redhibitory defects and are liable jointly and in solido.

12.

The above-cited problems with the Tub Grinder are redhibitory defects that render the Tub Grinder useless. The defects also make use of the Tub Grinder so inconvenient that LCG would not have purchased the Tub Grinder had it known of the defects.

13.

These redhibitory defects existed at the time of manufacture and delivery of the Tub Grinder to LCG.

14.

These redhibitory defects were not known to LCG at the time of the sale of the Tub Grinder, nor could the defects have been discovered by LCG prior to the sale.

15.

Because of these redhibitory defects, LCG is entitled to obtain rescission of the sale of the Tub Grinder pursuant to Louisiana Civil Code article 2520.

16.

Because Defendants were unable to repair or remedy the redhibitory defects, LCG is entitled to a return of the purchase price of the Tub Grinder with interest pursuant to Louisiana Civil Code article 2531.

17.

LCG is also entitled to reimbursement for the reasonable expenses occasioned by the sale and the costs it incurred to preserve the Tub Grinder, including expenses LCG incurred in maintaining, repairing, and/or attempting to repair the Tub Grinder pursuant to Louisiana Civil Code article 2531 as well as all damages provided for by Louisiana Code of Civil Procedure article 2545, including but not limited to lost profits and attorney's fees.

Breach of the Warranty of Fitness

18.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-17 above.

19.

Pursuant to Louisiana Civil Code article 2524, Defendants also breached the warranty of fitness and are liable jointly and in solido.

20.

Because of the above-mentioned problems, the Tub Grinder was not reasonably fit for its ordinary use.

21.

The Tub Grinder was also not fit for LCG's intended use or particular purpose. Defendants knew both LCG's intended use and particular purpose of the Tub Grinder, and LCG relied upon Defendants in selecting the Tub Grinder.

22.

Accordingly, Defendants is liable to LCG for the following damages:

- (a) reimbursement of the purchase price of the Tub Grinder, plus interest;
- (b) costs and expenses incurred in repairing and/or attempting to repair the Tub Grinder (past, present, and future);
- (c) costs and expenses incurred in renting replacement Tub Grinders (past, present, and future); and
- (d) lost revenue resulting from inoperation of the Tub Grinder (past, present, and future).

Warranty Against Hidden Defects

23.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-22 above.

24.

Pursuant to Louisiana Civil Code article 2475, Defendants are liable to LCG, jointly and in solido, because these defects in the Tub Grinder were hidden from LCG.

25.

Accordingly, Defendants are liable to LCG for the following damages:

- (a) reimbursement of the purchase price of the Tub Grinder, plus interest;
- (b) costs and expenses incurred in repairing and/or attempting to repair the Tub Grinder (past, present, and future);
- (c) costs and expenses incurred in renting replacement Tub Grinders (past, present, and future); and
- (d) lost revenue resulting from inoperation of the Tub Grinder (past, present, and future).

Legal Interest and Costs

26.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-25 above.

27.

LCG requests legal interest from the date of judicial demand and all costs of these proceedings.

WHEREFORE, premises considered, Plaintiff, LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT ("LCG"), respectfully prays for the following:

- (a) that Defendants be served with this petition and be duly cited to appear and answer these allegations;
- (b) that, after due proceedings are had, judgment be rendered in favor of LCG and against Defendants, jointly and in solido, for the following:
 - a. rescission of the sale of the Tub Grinder, with interest to be paid to LCG;
 - b. a reasonable amount of damages to be fixed by the Court;
 - c. attorneys' fees;
 - d. legal interest from the date of judicial demand until paid; and
 - e. all costs of court for these proceedings; and
- (c) for all general and equitable relief deemed proper in the premises.

Respectfully submitted,

GIBSON LAW PARTNERS, LLC
Attorneys at Law



MICHAEL O. ADLEY (#37009)

ALAN W. STEWART (#34107)

2448 Johnston Street (70503)

Post Office Box 52124

Lafayette, LA 70505

Direct Dial: 337-761-6033

Facsimile: 337-761-6061

Email: michaeladley@gibsonlawpartners.com

Email: alanstewart@gibsonlawpartners.com

Attorneys for plaintiff Lafayette City-Parish
Consolidated Government

PLEASE SERVE:

W. L. DOGGETT, LLC

Through registered agent:

C T CORPORATION SYSTEM

3867 Plaza Tower Dr.

Baton Rouge, LA 70816

MORBARK, LLC

Through registered agent:

C T CORPORATION SYSTEM

3867 Plaza Tower Dr.

Baton Rouge, LA 70816

CATERPILLAR, INC.

Through registered agent:

Corporation Service Company

501 Louisiana Avenue

Baton Rouge, LA 70802

Lafayette Parish
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**LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT**

V.

**W. L. DOGGETT, LLC d/b/a DOGGETT
MACHINERY SERVICES**

DOCKET NO. _____

15TH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

REQUEST FOR NOTICE OF TRIAL DATE, ETC.

PLEASE TAKE NOTICE that MICHAEL O. ADLEY and ALAN W. STEWART, attorneys for plaintiff Lafayette City-Parish Consolidated Government, do hereby request written notice of the date of trial of the above matter, as well as notice of all hearings (whether on merits or otherwise), orders, judgments and interlocutory decrees, and any and all formal steps taken by the parties herein, the Judge or any member of the Court or Clerk of Court's office, as provided in Louisiana Code of Civil Procedure Articles 1572, 1913 and 1914.

Respectfully submitted,

GIBSON LAW PARTNERS, LLC
Attorneys at Law



MICHAEL O. ADLEY (#37009)
ALAN W. STEWART (#34107)
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*Attorneys for plaintiff Lafayette City-Parish
Consolidated Government*

Lafayette Parish
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FIFTEENTH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

CIVIL ACTION NO. 2021-6667

DIVISION "I"

LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT

VERSUS

MORBARK, LLC, W.L. DOGGETT, LLC d/b/a DOGGETT MACHINERY SERVICES and
CATERPILLAR, INC.

FILED

DEPUTY CLERK

NOTICE OF REMOVAL OF CASE TO FEDERAL COURT

Defendant, CATERPILLAR INC. ("Caterpillar"), hereby gives notice that on January 13, 2022, Caterpillar filed a notice of removal of this case from this Court to the United States District Court for the Western District of Louisiana. See Removal Notice, attached as Exhibit "1."

/s/ Deirdre C. McGlinchey

Deirdre C. McGlinchey (24167) (T.A.)
dmcglinchey@mcglinchey.com
Patrick J. O'Cain (20993)
pocain@mcglinchey.com
Farren L. Davis (38714)
fdavis@mcglinchey.com
McGlinchey Stafford, PLLC
601 Poydras Street, Floor 12
New Orleans, Louisiana 70130
Telephone (504) 586.1200
COUNSEL FOR CATERPILLAR INC.

Lafayette Parish
Filed Jan 18, 2022 3:53 PM
Simone Vaughan
Deputy Clerk of Court
E-File Received Jan 18, 2022 3:11 PM

C-20216667

1

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on:

Michael O. Adley, Esq.
michaeladley@gibsonlawpartners.com
Alan W. Stewart, Esq.
alanstewart@gibsonlawpartners.com
Gibson Law Partners, LLC
2448 Johnson Street (70503)
P.O. Box 52124
Lafayette, Louisiana 70505
COUNSEL FOR PLAINTIFF

Paul M. Lavelle, Esq.
plavelle@cottenschmidt.com
Sarah P. Reid, Esq.
sreid@cottenschmidt.com
Cotton Schmidt, LLP
650 Poydras Street, Suite 1950
New Orleans, Louisiana 70130
ATTORNEYS FOR MORBARK, LLC

Andre deLaunay, Esq.
andre.delaunay@doggett.com
9111 North Freeway
Houston, Texas 77037
GENERAL COUNSEL FOR W.L. DOGETT, LLC

by "e-mail" and by depositing a copy of same, postage prepaid and duly addressed, in the U.S.

Mail, this January 18, 2022.

/s/ Deirdre C. McGlinchey
DEIRDRE C. MCGLINCHEY

Case 6:22-cv-00146 Document 1 Filed 01/18/22 Page 1 of 5 PageID #: 1

Lafayette Parish
 Filed Jan 18, 2022 3:53 PM
 Simone Vaughan
 Deputy Clerk of Court

C-20216667

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

LAFAYETTE CITY-PARISH	*	CIVIL ACTION NO:
CONSOLIDATED GOVERNMENT	*	
	*	
VERSUS	*	JUDGE:
	*	
MORBARK, LLC, W.L. DOGGETT, LLC	*	
d/b/a DOGGETT MACHINERY SERVICES	*	MAGISTRATE JUDGE:
and CATERPILLAR, INC.	*	
	*	

NOTICE OF REMOVAL

TO: United States District Court
 Western District of Louisiana

Pursuant to 28 U.S.C. §§ 1332 and 1441, defendant, CATERPILLAR INC. ("Caterpillar") (erroneously identified in the plaintiff's "Petition for Redhibition and Damages" as "Caterpillar, Inc."), hereby gives notice of its removal of this civil action from the Fifteenth Judicial District Court for the Parish of Lafayette, State of Louisiana, Civil Action No. 2021-6667, to the United States District Court for the Western District of Louisiana.

I.

Plaintiff filed its "Petition for Redhibition and Damages" in the Fifteenth Judicial District Court for the Parish of Lafayette, State of Louisiana, on December 29, 2021. A copy of plaintiff's petition is attached to this notice as Exhibit "A."

II.

Caterpillar, through its registered agent for service of process, was served with plaintiff's petition on January 4, 2022.

Morbark, LLC, through its registered agent for service of process, was served with plaintiff's petition on January 4, 2022.

W.L. Doggett, LLC, through its registered agent for service of process, was served with plaintiff's petition on January 4, 2022.

Accordingly, this Notice of Removal is filed within the time period prescribed by 28 U.S.C. §1446(b). *See, Yu-Wen Chiu v. Lincoln*, 2018 WL 4205423 (E.D. La. 9/4/18) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) ("defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, through service or otherwise, after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service").

III.

The action is one of a civil nature that alleges the liability of Caterpillar; Morbark, LLC; and W.L. Doggett, LLC, to plaintiff.

IV.

The matter in dispute reasonably appears to seek damages in excess of seventy-five thousand dollars, exclusive of interest and costs. Plaintiff seeks to rescind the sale and recover the purchase price of a piece of machinery whose alleged purchase price was \$680,000.00. Plaintiff also seeks to recover damages and attorney fees. *See* Exhibit "A" (petition).

V.

Plaintiff, Lafayette City-Parish Consolidated Government, is a Louisiana municipal corporation and a citizen of the State of Louisiana.

VI.

Caterpillar Inc. is a Delaware corporation with its principal place of business in Illinois.

Morbark, LLC is a Michigan limited liability company whose sole member is Alamo Group (USA) Inc., a Delaware corporation with its principal place of business in Texas.

W.L. Doggett, LLC is a Texas limited liability company whose sole member is Mr. Wm. Leslie Doggett, Sr., a citizen of Texas.

VII.

Complete diversity of citizenship therefore exists between the plaintiff and all named defendants.

VIII.

As indicated by the Notices of Consent, attached to this pleading, both Morbark LLC and W.L. Doggett, LLC consent to the removal of this case to federal court. *See* Exhibit “B” (notice of consent signed by Andre Delaunay, general counsel for W.L. Doggett, LLC; and notice of consent signed by Paul M. Lavelle, counsel for Morbark, LLC). The requirements of 28 U.S.C. 1446(B)(2)(A) have thus been satisfied, in that “all defendants who have been properly joined and served . . . consent to the removal of the action.”

IX.

This matter is removable pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441.

WHEREFORE, Caterpillar Inc. gives notice of removal of the above captioned case from state court to this Court.

Case 6:22-cv-00146 Document 1 Filed 01/18/22 Page 4 of 5 PageID #: 4

/s/ Deirdre C. McGlinchey

Deirdre C. McGlinchey (24167) (T.A.)

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601 Poydras Street, Floor 12

New Orleans, Louisiana 70130

Telephone (504) 586.1200

COUNSEL FOR CATERPILLAR INC.

Case 6:22-cv-00146 Document 1 Filed 01/18/22 Page 5 of 5 PageID #: 5

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I hereby certify that a copy of the above and foregoing pleading has been served on:

Michael O. Adley, Esq.
michaeladley@gibsonlawpartners.com
Alan W. Stewart, Esq.
alanstewart@gibsonlawpartners.com
Gibson Law Partners, LLC
2448 Johnson Street (70503)
P.O. Box 52124
Lafayette, Louisiana 70505
COUNSEL FOR PLAINTIFF

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Sarah P. Reid, Esq.
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650 Poydras Street, Suite 1950
New Orleans, Louisiana 70130
ATTORNEYS FOR MORBARK, LLC

Andre deLaunay, Esq.
andre.delahunay@doggett.com
9111 North Freeway
Houston, Texas 77037
GENERAL COUNSEL FOR W.L. DOGETT, LLC

by "e-mail" and by depositing a copy of same, postage prepaid and duly addressed, in the U.S.

Mail, this January 18, 2022.

/s/ Deirdre C. McGlinchey
DEIRDRE C. MCGLINCHEY

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lafayette City-Parish Consolidated Government

(b) County of Residence of First Listed Plaintiff Lafayette Parish, LA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Morbark, LLC; W.L. Doggett, LLC; Caterpillar Inc.

County of Residence of First Listed Defendant Isabella County, MI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	PERFECTION/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC §§1 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13952) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 430 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 570 Securities/Commodities/Exchange <input type="checkbox"/> 590 Other Statutory Actions <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 596 Arbitration <input type="checkbox"/> 599 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify)

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332Brief description of cause:
Redhibition/breach of warranty case involving machinery**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
\$680,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 1/18/21

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Lafayette Parish
Filed Jan 18, 2022 3:53 PM
Simone Vaughan
Deputy Clerk of Court

C-20216667

E-File Received Jan 18, 2022 3:11 PM

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ATTORNEYS FOR MORBARK, LLC

The attorneys who will be representing W.L. Doggett, LLC are not yet known.

Lafayette Parish
Filed Dec 29, 2021 10:59 AM
Simone Vaughan
Deputy Clerk of Court
C-20216667
1

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

V.

MORBARK, LLC, W. L. DOGGETT, LLC
d/b/a DOGGETT MACHINERY SERVICES
and CATERPILLAR, INC.

DOCKET NO. _____

15TH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

PETITION FOR REDHIBITION AND DAMAGES

NOW INTO COURT, through undersigned counsel, comes Plaintiff, LAFAYETTE CITY-
PARISH CONSOLIDATED GOVERNMENT (hereinafter "LCG"), who avers as follows:

Defendants

1.

Made Defendants herein are:

- a. **Morbark, LLC ("Morbark")**, a foreign limited liability company with its principal business establishment in Louisiana located at 501 Louisiana Avenue Baton Rouge, Louisiana 70802.
- b. **W.L. Doggett, LLC d/b/a Doggett Machinery Services, LLC ("Doggett")**, a foreign limited liability company with its principal business establishment in Louisiana located at 1011 Daradele Avenue, Baton Rouge, LA 70816.
- c. **Caterpillar, Inc. ("CAT")**, a foreign business corporation with its principal business establishment in Louisiana located at 501 Louisiana Avenue Baton Rouge, Louisiana 70802.

Factual Background

2.

On or about July 6, 2020, LCG purchased a Morbark 1100 Tub Grinder (hereinafter "Tub Grinder") from Doggett for \$680,000.00. The Tub Grinder was manufactured by Morbark. Its engine was manufactured and supplied by CAT.

3.

Doggett delivered the Tub Grinder to Lafayette, Louisiana, on or about July 6, 2020.

4.

LCG intended to use the Tub Grinder to compost yard waste dropped off by Lafayette Parish residents. LCG receives revenue for each cubic yard of yard waste received.

1

5.

Since July 6, 2020, LCG has experienced (and continues to experience) numerous problems with the Tub Grinder, including but not limited to malfunctions with the Tub Grinder's engine belt, belt wheel assembly, motors, torque limiter sensors, hydraulic hoses, grinding tips, nuts, bolts, welds, seals, rubber gaskets, alternator, fan assembly, deflector shield, AC compressor, AC dryer, main monitor, and engine.

6.

LCG provided notice to Defendants of these problems. Defendants attempted repairs to the Tub Grinder on numerous occasions to no avail, most recently on October 7, 2021.

7.

LCG incurred costs and expenses attempting to fix/repair these problems with the Tub Grinder.

8.

Because these problems have rendered the Tub Grinder inoperable, LCG had to rent a replacement Tub Grinder on multiple occasions at LCG's own cost.

9.

LCG lost revenue whenever the Tub Grinder was inoperable.

Warranty Against Redhibitory Defects

10.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-9 above.

11.

Pursuant to Louisiana Civil Code article 2520, Defendants breached the warranty against redhibitory defects and are liable jointly and in solido.

12.

The above-cited problems with the Tub Grinder are redhibitory defects that render the Tub Grinder useless. The defects also make use of the Tub Grinder so inconvenient that LCG would not have purchased the Tub Grinder had it known of the defects.

13.

These redhibitory defects existed at the time of manufacture and delivery of the Tub Grinder to LCG.

14.

These redhibitory defects were not known to LCG at the time of the sale of the Tub Grinder, nor could the defects have been discovered by LCG prior to the sale.

15.

Because of these redhibitory defects, LCG is entitled to obtain rescission of the sale of the Tub Grinder pursuant to Louisiana Civil Code article 2520.

16.

Because Defendants were unable to repair or remedy the redhibitory defects, LCG is entitled to a return of the purchase price of the Tub Grinder with interest pursuant to Louisiana Civil Code article 2531.

17.

LCG is also entitled to reimbursement for the reasonable expenses occasioned by the sale and the costs it incurred to preserve the Tub Grinder, including expenses LCG incurred in maintaining, repairing, and/or attempting to repair the Tub Grinder pursuant to Louisiana Civil Code article 2531 as well as all damages provided for by Louisiana Code of Civil Procedure article 2545, including but not limited to lost profits and attorney's fees.

Breach of the Warranty of Fitness

18.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-17 above.

19.

Pursuant to Louisiana Civil Code article 2524, Defendants also breached the warranty of fitness and are liable jointly and in solido.

20.

Because of the above-mentioned problems, the Tub Grinder was not reasonably fit for its ordinary use.

21.

The Tub Grinder was also not fit for LCG's intended use or particular purpose. Defendants knew both LCG's intended use and particular purpose of the Tub Grinder, and LCG relied upon Defendants in selecting the Tub Grinder.

22.

Accordingly, Defendants is liable to LCG for the following damages:

- (a) reimbursement of the purchase price of the Tub Grinder, plus interest;
- (b) costs and expenses incurred in repairing and/or attempting to repair the Tub Grinder (past, present, and future);
- (c) costs and expenses incurred in renting replacement Tub Grinders (past, present, and future); and
- (d) lost revenue resulting from inoperation of the Tub Grinder (past, present, and future).

Warranty Against Hidden Defects

23.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-22 above.

24.

Pursuant to Louisiana Civil Code article 2475, Defendants are liable to LCG, jointly and in solido, because these defects in the Tub Grinder were hidden from LCG.

25.

Accordingly, Defendants are liable to LCG for the following damages:

- (a) reimbursement of the purchase price of the Tub Grinder, plus interest;
- (b) costs and expenses incurred in repairing and/or attempting to repair the Tub Grinder (past, present, and future);
- (c) costs and expenses incurred in renting replacement Tub Grinders (past, present, and future); and
- (d) lost revenue resulting from inoperation of the Tub Grinder (past, present, and future).

Legal Interest and Costs

26.

LCG adopts and re-urges the allegations and information contained in Paragraphs 1-25 above.

27.


LCG requests legal interest from the date of judicial demand and all costs of these proceedings.

WHEREFORE, premises considered, Plaintiff, LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT ("LCG"), respectfully prays for the following:

- (a) that Defendants be served with this petition and be duly cited to appear and answer these allegations;
- (b) that, after due proceedings are had, judgment be rendered in favor of LCG and against Defendants, jointly and in solido, for the following:
- a. rescission of the sale of the Tub Grinder, with interest to be paid to LCG;
 - b. a reasonable amount of damages to be fixed by the Court;
 - c. attorneys' fees;
 - d. legal interest from the date of judicial demand until paid; and
 - e. all costs of court for these proceedings; and
- (c) for all general and equitable relief deemed proper in the premises.

Respectfully submitted,

GHIBSON LAW PARTNERS, LLC
Attorneys at Law


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Consolidated Government

PLEASE SERVE:

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MORBARK, LLC
Through registered agent:
C T CORPORATION SYSTEM
3867 Plaza Tower Dr.
Baton Rouge, LA 70816

CATERPILLAR, INC.
Through registered agent:
Corporation Service Company
501 Louisiana Avenue
Baton Rouge, LA 70802

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

VERSUS

MORBARK, LLC, W.L. DOGGETT, LLC
d/b/a DOGGETT MACHINERY SERVICES
and CATERPILLAR, INC.

* CIVIL ACTION NO:

* JUDGE:

* MAGISTRATE JUDGE:

CONSENT TO REMOVAL

NOW INTO COURT, through undersigned counsel, comes W.L. DOGGETT, LLC, and hereby gives notice, pursuant to 28 U.S.C. § 1446(B)(2)(A), that it consents to the removal of this case from state court to federal court.



General Counsel

ATTORNEYS FOR W.L. DOGGETT, LLC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

LAFAYETTE CITY-PARISH	* CIVIL ACTION NO:
CONSOLIDATED GOVERNMENT	*
	*
VERSUS	* JUDGE:
	*
MORBARK, LLC, W.L. DOGGETT, LLC	*
d/b/a DOGGETT MACHINERY SERVICES	* MAGISTRATE JUDGE:
and CATERPILLAR, INC.	*
	*

CONSENT TO REMOVAL

NOW INTO COURT, through undersigned counsel, comes MORBARK, LLC, and hereby gives notice, pursuant to 28 U.S.C. § 1446(B)(2)(A), that it consents to the removal of this case from state court to federal court.

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